

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine *Phlox pilosa* var. *longipilosa* (Long-Haired Phlox) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to list a plant, *Phlox pilosa* var. *longipilosa* (long-haired phlox), as a Threatened species under the authority contained in the Endangered Species Act of 1973, as amended (hereinafter the Act). This plant is endemic to southwestern Oklahoma in Greer and

Kiowa Counties, and occurs on State and private lands. The populations are threatened by quarrying, grazing, development, and recreation. If finalized, this proposal will provide *Phlox pilosa* var. *longipilosa* with the official protection provided by the Act for a Threatened species. The Service seeks data and comments from the public on this proposal.

DATES: Comments from the public and the State of Oklahoma must be received by October 28, 1983. Public hearing requests must be received by October 13, 1983.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, S.W., Room 407, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Dr. Russell L. Kologiski, Botanist, Region 2 Endangered Species staff (see **ADDRESSES** above) (505/766-3972) or Mr. John L. Spinks, Jr., Chief, Washington Office of Endangered Species, U.S. Fish and Wildlife Services, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

Phlox pilosa var. *longipilosa* has rose-purple tubular flowers with horizontal lobes. There are many flower clusters per stem and several stems per plant. The plants are perennial and 30-45 centimeters tall. The leaves are usually opposite, linear, 2.5-6.2 centimeters long, 0.3-0.6 centimeters wide, and borne close together. The inflorescence, stems, and calyx are densely covered with long pointed hairs. Some glandular hairs are also present. Flowering is from late April through mid-June.

This variety presently is known only from the Quartz Mountains in the western extension of the Wichita Mountains in Southwestern Oklahoma, and is a part of the native mid-grass prairie ecosystem. There are herbarium specimens taken in 1937 from the Wichita Mountains National Wildlife Refuge in Comanche County to the east of the present known distribution. However, a recent survey of the Refuge by Taylor and Taylor (1981) failed to locate any plants, and it is believed that if the species is still extant in that area, its population must be very small.

This plant may have only recently evolved as a separate variety, and thus is of interest in an evolutionary sense (Taylor and Taylor, 1981). This taxon was treated as a variety or subspecies of *Phlox pilosa* by Wherry (1955); Waterfall (1971) considered it to be a full species, *Phlox longipilosa*. After studying this plant however, Taylor and Taylor (1981) concluded that it warrants status as a variety of *Phlox pilosa*.

Ayensu and DeFilipps (1978) considered *Phlox pilosa* var. *longipilosa* (long-haired phlox) to be an Endangered species. This classification by Ayensu and DeFilipps led the Service to include the long-haired phlox (under the synonym *Phlox longipilosa*) in a notice of review for plants published in the **Federal Register** (45 FR 82480) on December 15, 1980. The Service contracted with Drs. R. J. and C. E. Taylor to conduct a survey of the long-haired phlox, and to advise on its current status in the wild. In May 1981, Taylor and Taylor submitted a final report to the Service that documented the threats to the long-haired phlox, delineated its present known range, and recommended that it be listed as a Threatened species pursuant to the Act. The recommendation for Threatened rather than Endangered status was based on the fact that the species occurs at a number of widely scattered sites, and is common on some of these. Thus, it is likely within the foreseeable future to become an Endangered species (definition of Threatened) rather than extinct (definition of Endangered) throughout all or a significant part of its range. The present document acknowledges acceptance of the findings of Taylor and Taylor by officially proposing *Phlox pilosa* var. *longipilosa* to be a Threatened species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal list. The Secretary of the Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. Factor A is the most relevant to this species. All of these factors and their application to *Phlox pilosa* var. *longipilosa* (long-haired phlox) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Phlox pilosa* var. *longipilosa* is a geographically isolated variety which is restricted to a very small range. Extensive surveys have not located any recent populations other than those in Quartz Mountain State Park and a few to the north and west of the park. Herbarium specimens collected in 1937 indicate that the species may have occurred on the Wichita Mountains National Wildlife Refuge in Comanche County, but recent surveys have failed to disclose its

current presence there. There are three presently known populations on about three parcels of private land on a granite outcrop just north of the town of Granite. They are in back yards, a Girl Scout camp, and adjacent to a large quarry. One population is on about 2 acres; the others are on less than ½ acre. The mountain west of Lake Altus has one population on the west side on private land, and two on the east side, in Quartz Mountain State Park. King Mountain, in Quartz Mountain State Park, has populations on the north and west sides. Populations consist from 5 or 6 plants to about 150 plants; the larger populations may be scattered over several acres and are generally in less-used areas in the State Park. The eastern portion of the park has been developed for recreation and has picnic tables, two youth camps, campgrounds, and a lodge. Mowing of grass in this area has damaged the *Phlox* population. This area receives high use. The two park populations on King Mountain are in areas that currently receive less recreational use, and have larger populations of the *Phlox*. Expansion of the quarry, grazing on private land, or expanded park use could easily place this plant in danger of extinction. This species needs additional protection and management as it is being impacted by recreational use in sections of the park and potentially by grazing and development on private land.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* This may be a potential threat to the species. Many species of phlox are in cultivation as ornamentals, and *Phlox longipilosa* is an attractive perennial which could be of horticultural interest. At present, however, the Service is not aware of the species' ever having been used for that purpose and this factor is not applicable.

C. *Disease or predation* (including grazing). This plant appears to be harmed by overgrazing, and further study of this problem is needed.

D. *The inadequacy of existing regulatory mechanisms.* There is currently no specific State or Federal protection for *Phlox pilosa* var. *longipilosa*. An Oklahoma State law prohibits plant collection in State parks, but this prohibition is difficult to enforce and does not affect the harmful actions, other than collection, which are the major threats to this plant.

E. *Other natural or manmade factors affecting its continued existence.* Overgrazing of native mid-grass prairie could reduce some populations by interfering with maintenance or natural succession of this plant community. The

invasion of native prairie by woody species could degrade or eliminate the habitat.

Because this plant occurs at a number of widely scattered sites, and is common at some of these, it is not at present considered to be an Endangered species as defined by the Act. However, based upon the threats enumerated above, the Service believes that it is a Threatened species (viz., one that is likely to become Endangered within the foreseeable future).

Critical Habitat

The Act requires that Critical Habitat be designated at the time a species is listed, to the maximum extent prudent and determinable. Critical Habitat is not being proposed for *Phlox pilosa* var. *longipilosa* because doing so may increase the vulnerability of the species and thus Critical Habitat designation is not considered prudent. Collecting could become a threat to this species, as it has a brightly colored flower and could be cultivated. This attractiveness is substantiated by widespread ornamented cultivation of other *Phlox* species. The Endangered Species Act of 1973, as amended, requires publication of Critical Habitat maps in the **Federal Register** which could draw attention to this phlox and promote taking by collectors.

Available Conservation Measures

This proposal, if made final, could serve to enhance the survival of long-haired phlox in the wild. Listing of a species may lead to the development of a recovery plan, and can result in funds being made available for research and other activities that could benefit the species. For instance, although this phlox is now known to occur only on three isolated granite hills in southwestern Oklahoma, it has been collected in the past (1937) on the Wichita Mountains National Wildlife Refuge farther to the east in Comanche County. Although no extant populations are believed to occur there now, that area is apparently a part of the historic range of the species, and would represent a logical reintroduction site. Planning and funds for such a reintroduction could develop as a result of listing this phlox as Threatened.

Section 7(a)(4) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as Endangered or Threatened. Federal agencies are required under Section 7(a)(4) to informally confer with the Secretary on any action that is likely to jeopardize proposed species. This protection will now accrue to *Phlox pilosa* var.

longipilosa. If published as a final rule, Federal agencies will be required to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of *Phlox pilosa* var. *longipilosa*. Provisions for Interagency Cooperation which implement Section 7 of the Act are codified at 50 CFR Part 402. The Act and implementing regulations published in the June 24, 1977, **Federal Register** set forth a series of general trade prohibitions and exceptions which apply to all Threatened plant species. The regulations pertaining to Threatened plants are found at 50 CFR Sections 17.71 and 17.72 and are summarized in the following text.

If it is listed as Threatened, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply to *Phlox pilosa* var. *longipilosa*, except for an exemption with respect to seeds from cultivation. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import, export, or transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer this species for sale in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving Threatened species, under certain circumstances.

International and interstate commercial trade in *Phlox pilosa* var. *longipilosa* is known to exist. It is not anticipated that many trade permits involving plants of wild origin would ever be issued since this plant is not common in the wild and is not presently in cultivation.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession Endangered plant species from areas under Federal jurisdiction. Section 4(d) provides for regulations to provide this protection to Threatened plant species. This new prohibition will apply to *Phlox pilosa* var. *longipilosa* once new regulations are promulgated. Permits for exceptions to this prohibition are available through Sections 10(a) and 4(d) of the Act, following the general approach of 50 CFR 17.72 until revised regulations are promulgated. Although this species is not now known to occur on Federal lands, herbarium specimens indicate that at one time, it did range eastward to the Wichita Mountains National Wildlife Refuge. If populations should be found on that Refuge, all of the above

provisions would apply to those populations. Also, if populations are reintroduced onto the Refuge in the future these regulations may apply to them.

Requests for copies of the regulations on plants and inquires regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

The Service will now review this species to determine whether it should be considered for the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere for placement upon its annex, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and the Regional Office (see **ADDRESSES** section), and may be examined by appointment during regular business hours. This assessment will form the basis for a decision which will be made when the final rule is issued as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500-1508).

Public Comments Solicited

The Service intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other party concerning any aspect of these proposed rules are hereby solicited.

Comments particularly are sought concerning:

- (1). biological or other relevant data concerning any threat (or the lack thereof) to *Phlox pilosa* var. *longipilosa*;
- (2). the location of any additional populations of *Phlox pilosa* var. *longipilosa* and the reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided for by Section 4 of the Act; and
- (3). additional information concerning the range and distribution of this phlox.

Final promulgation of the regulations on *Phlox pilosa* var. *longipilosa* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

Authors

The primary author of this proposed rule is Ms. Sandra Limerick, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972). Status information and a preliminary listing package were provided under contract to the Service by Dr. R. J. Taylor and Dr. C. E. Taylor,

Biology Department, Southeastern Oklahoma State University, Durant, Oklahoma 74701. E. LaVerne Smith and John L. Paradiso of the Washington Office of Endangered Species served as editors.

References

- Ayensu, E.S., and R.A. DeFilippis. 1978. Endangered and Threatened Plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, D.C. 403 pp.
- Taylor, R.J., and C.E. Taylor. 1981. Status report: *Phlox pilosa* var. *longipilosa*. Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 18 pp.
- Taylor, R.J., and C.E. Taylor. 1981. *Phlox pilosa* var. *longipilosa* (Waterfall) J. and C. Taylor comb. nov. (Polemoniaceae). SIDA 9(2):183-184.
- Waterfall, U.T. 1971. New species of *Cuscuta* and *Phlox* from Oklahoma. Rhodora 73:576-577.
- Wherry, E.T. 1955. The genus *Phlox*. Morris Arboretum Monographs, Philadelphia, Pennsylvania.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 is as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

2. It is proposed to amend § 17.12(h) by adding, in alphabetical order, the following to the list of Endangered and Threatened plants:

§ 17.11 Endangered and threatened plants.

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Polemoniaceae—Phlox family:						
<i>Phlox pilosa</i> var. <i>longipilosa</i>	Long-haired phlox	U.S.A. (OK)	T		NA	NA

Dated: July 22, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-23567 Filed 8-25-83; 8:45 am]

BILLING CODE 4310-55-M